UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

WILLIE JAMES COLEMAN,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	3:03 CV 1182 (CFD)
AZTEC LIGHTING, and	:	
L.D. KICHLER COMPANY,	:	
Defendants.		

RULING

The plaintiff brings this action against the defendants alleging violations of Title VII of the Civil Rights Act, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e et seq., and, under Connecticut common law, negligent infliction of emotional distress, and intentional infliction of emotional distress. Pending are Defendants' Motion to Dismiss [Doc. #8], Plaintiff's Request for Leave to Amend Complaint [Doc. #12], and Defendants' Renewed Motion to Dismiss [Doc. #14].

The defendants move to dismiss Count Two of the Complaint, which alleges negligent infliction of emotional distress. Under Federal Rule 12(b)(6) of the Federal Rules of Civil Procedure, the defendants argue that the plaintiff fails to state a claim for negligent infliction of emotional distress under Connecticut law. In particular, the defendants argue that the plaintiff alleges no facts that occurred in the context of the termination of his employment.

The plaintiff requests leave to amend his complaint to add certain facts to support a claim for negligent infliction of emotional distress. In addition, the plaintiff requests leave to add a fourth count in his complaint for constructive discharge. The defendants oppose the plaintiff's request for leave to

amend his complaint with respect to Count Two on the ground that such amendment would be futile.

In the alternative, the defendants renew their motion to dismiss Count Two of the Complaint for failure to state a claim upon which relief can be granted.

I. Motion to Dismiss Standard

When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Frasier v. General Elec. Co., 930 F.2d 1004, 1007 (2d Cir. 1991). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale-New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). Thus, a motion to dismiss under 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir. 1994) (citations and internal quotations omitted), cert. denied, 513 U.S. 816 (1994). In its review of a 12(b)(6) motion to dismiss, the Court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

II. Motion for Leave to Amend Standard

The plaintiff may amend its complaint only upon leave of the court or upon the consent of the opposing party. Fed.R.Civ.P. 15(a). Under Rule 15, "leave shall be freely given when justice so requires." Id.; see also Rachman Bag Co. v. Liberty Mut. Ins. Co., 46 F.3d 230, 234 (2d Cir. 1995). However, a court may exercise its discretion to deny amendment based upon the following factors: undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, and futility of the amendment. Foman v. Davis, 371 U.S. 178, 182 (1962). "In order to be considered futile, the complaint as amended would fail to withstand a motion to dismiss for failure to state a claim." Senich v. American-Republican, Inc., 215 F.R.D. 40, 41 (D. Conn. 2003) (citing Dougherty v. Town of North Hempstead Bd. of Zoning Appeals, 282 F.3d 83, 88 (2d Cir. 2002)). It is appropriate to deny a motion for leave to amend based on futility where "it is 'beyond doubt that the plaintiff can prove no set of facts in support' of his amended claims." Pangburn v. Culbertson, 200 F.3d 65, 70-71 (2d Cir. 1999) (quoting Ricciuti v. N.Y.C. Transit Auth., 941 F.2d 119, 123 (2d Cir. 1991)).

III. Discussion

Under Connecticut law, in the employment context, liability for negligent infliction of emotional distress arises only in the context of termination. Parsons v. United Techs. Corp., 243 Conn. 66, 88 (1997). "[A] claim of negligent infliction of emotional distress cannot be predicated on actions or omissions of employees occurring within the context of a continuing employment relationship." Armstead v. Stop & Shop Cos., 2003 WL 1343245, *4 (D. Conn. March 17, 2003). See also Copeland v. Home and Cmty. Health Servs., 2003 WL 22240629 (D. Conn. Sept. 29, 2003); Absher

v. Flexi Int'l Software, Inc., 2003 WL 2002778, *3 (D. Conn. March 31, 2003); Brunson v. Bayer Corp., 237 F. Supp. 2d 192, 208-09 (D. Conn. 2002); Boateng v. Apple Health Care, Inc., 156 F. Supp. 2d 247, 254 (D. Conn. 2001); Abate v. Circuit-Wise, Inc., 130 F. Supp. 2d 341, 346 (D. Conn. 2001); Perodeau v. City of Hartford, 259 Conn. 729, 744-63 (2002). There is well-established Connecticut Supreme Court and District Court of Connecticut precedent that "only conduct occurring in the process of termination can be a basis for recovery for negligent infliction of emotional distress in the employment context." Brunson, 237 F. Supp. 2d at 208.

In this case, the plaintiff alleges no facts that occurred in the context of the termination of his employment. Nor does he even allege that he was terminated. All of the allegations in the Complaint refer only to conduct that occurred during the course of his employment. Moreover, the allegations the plaintiff requests to add in the amended complaint do not refer to conduct that occurred in the termination process. In fact, the plaintiff requests leave to add a count for constructive discharge.

Reviewing the complaint in the light most favorable to the plaintiff, the Court concludes that the plaintiff has failed to allege any behavior by the defendant that could support a claim for negligent infliction of emotional distress. In addition, the Court concludes that the complaint, as amended with respect to Count Two, is futile as it would not survive a motion to dismiss for failure to state a claim.

IV. Conclusion

For the foregoing reasons, Defendants' Motion to Dismiss [Doc. #8] is GRANTED. Plaintiff's

Request for Leave to Amend Complaint [Doc. #12] is GRANTED IN PART, DENIED IN PART. Plaintiff's remaining causes of action are those under Title VII (including constructive discharge), and under Connecticut common law for intentional infliction of emotional distress.[1] The plaintiff is directed to file a revised Amended Complaint in accordance with this ruling by February 20, 2004. Defendants' Renewed Motion to Dismiss [Doc. #14] is DENIED as moot.

SO ORDERED this 28th day of January 2004, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

[1]It is not clear whether the new constructive discharge count is based on Title VII and/or Connecticut law.